

§ 922.180

15 CFR Ch. IX (1–1–10 Edition)

**AREA SURROUNDING THE MARQUESAS KEYS—
Continued**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
38	24 deg.36.15' N	81 deg.51.78' W.
39	24 deg.34.40' N	81 deg.50.60' W.
40	24 deg.33.44' N	81 deg.49.73' W.
41	24 deg.31.20' N	81 deg.52.10' W.
42	24 deg.28.70' N	81 deg.56.80' W.
43	24 deg.26.60' N	81 deg.59.55' W.

**AREA SURROUNDING THE DRY TORTUGAS
ISLANDS**

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
44	24 deg.32.00' N	82 deg.53.50' W.
45	24 deg.32.00' N	83 deg.00.05' W.
46	24 deg.39.70' N	83 deg.00.05' W.
47	24 deg.45.60' N	82 deg.54.40' W.
48	24 deg.45.60' N	82 deg.47.02' W.
49	24 deg.42.80' N	82 deg.43.90' W.
50	24 deg.39.50' N	82 deg.43.90' W.
51	24 deg.35.60' N	82 deg.46.40' W.
52	24 deg.32.00' N	82 deg.53.50' W.

[66 FR 4377, Jan. 17, 2001, as amended at 66 FR 34534, June 29, 2001]

**Subpart Q—Hawaiian Islands
Humpback Whale National
Marine Sanctuary**

AUTHORITY: 16 U.S.C. 1431 *et seq.* and subtitle C, title II, Pub. L. 102–587, 106 Stat. 5055.

SOURCE: 64 FR 66570, Nov. 29, 1999, unless otherwise noted.

§ 922.180 Purpose.

(a) The purpose of the regulations in this subpart is to implement the designation of the Hawaiian Islands Humpback Whale National Marine Sanctuary by regulating activities affecting the resources of the Sanctuary or any of the qualities, values, or purposes for which the Sanctuary was designated, in order to protect, preserve, and manage the conservation, ecological, recreational, research, educational, historical, cultural, and aesthetic resources and qualities of the area. The regulations are intended to supplement and complement existing regulatory authorities; to facilitate to the extent compatible with the primary objective of protecting the humpback whale and its habitat, all public

and private uses of the Sanctuary, including uses of Hawaiian natives customarily and traditionally exercised for subsistence, cultural, and religious purposes, as well as education, research, recreation, commercial and military activities; to reduce conflicts between compatible uses; to maintain, restore, and enhance the humpback whale and its habitat; to contribute to the maintenance of natural assemblages of humpback whales for future generations; to provide a place for humpback whales that are dependent on their Hawaiian Islands wintering habitat for reproductive activities, including breeding, calving, and nursing, and for the long-term survival of their species; and to achieve the other purposes and policies of the HINMSA and NMSA.

(b) These regulations may be modified to fulfill the Secretary's responsibilities for the Sanctuary, including the provision of additional protections for humpback whales and their habitat, if reasonably necessary, and the conservation and management of other marine resources, qualities and ecosystems of the Sanctuary determined to be of national significance. The Secretary shall consult with the Governor of the State of Hawaii on any modification to the regulations contained in this part. For any modification of the regulations contained in this part that would constitute a change in a term of the designation, as contained in the Designation Document for the Sanctuary, the Secretary shall follow the applicable requirements of sections 303 and 304 of the NMSA, and sections 2305 and 2306 of the HINMSA.

(c) Section 304(e) of the NMSA requires the Secretary to review management plans and regulations every five years, and make necessary revisions. Upon completion of the five year review of the Sanctuary management plan and regulations, the Secretary will repropose the Sanctuary management plan and regulations in their entirety with any proposed changes thereto. The Governor of the State of Hawaii will have the opportunity to review the re-proposed management plan and regulations before they take effect and if the Governor certifies any term or terms of such management plan or

regulations as unacceptable, the unacceptable term or terms will not take effect in State waters of the Sanctuary.

§ 922.181 Boundary.

(a) Except for excluded areas described in paragraph (b) of this section, the Hawaiian Islands Humpback Whale National Marine Sanctuary consists of the submerged lands and waters off the coast of the Hawaiian Islands seaward from the shoreline, cutting across the mouths of rivers and streams:

(1) To the 100-fathom (183 meter) isobath from Kailiu Point eastward to Mokolea Point, Kauai;

(2) To the 100-fathom (183 meter) isobath from Puaena Point eastward to Mahie Point, and from the Kapahulu Groin in Waikiki eastward to Makapuu Point, Oahu;

(3) To the 100-fathom (183 meter) isobath from Cape Halawa, Molokai, south and westward to Ilio Point, Molokai; southwestward to include Penguin Banks; eastward along the east side of Lanai; to the waters seaward of the three nautical mile limit north of Kahoolawe, to the Hanamanoia Lighthouse on Maui, and northward along the shoreline to Lipoa Point, Maui;

(4) To the deep water area of Pailolo Channel from Cape Halawa, Molokai, to Lipoa Point, Maui, and southward;

(5) To the 100-fathom (183 meter) isobath from Upolu Point southward to Keahole Point, Hawaii.

(b) Excluded from the Sanctuary boundary are the following commercial ports and small boat harbors:

HAWAII (BIG ISLAND)

Kawaihae Boat Harbor & Small Boat Basin

LANAI

Kaumalapau Harbor, Manele Harbor

MAUI

Lahaina Boat Harbor
Maalaea Boat Harbor

MOLOKAI

Hale o Lono Harbor
Kaunakakai Harbor

OAHU

Kuapa Pond (Hawaii Kai)

(c) The coordinates of the lateral extents of each boundary area within the Sanctuary boundary appear in Appendix A of this subpart Q.

§ 922.182 Definitions.

(a) *Acts* means the Hawaiian Islands National Marine Sanctuary Act (HINMSA; sections 2301-2307 of Pub. L. 102-587), and the National Marine Sanctuaries Act (NMSA; also known as Title III of the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 16 U.S.C. 1431 *et seq.*).

Adverse impact means an impact that independently or cumulatively damages, diminishes, degrades, impairs, destroys, or otherwise harms.

Alteration of the seabed means drilling into, dredging, or otherwise altering a natural physical characteristic of the seabed of the Sanctuary; or constructing, placing, or abandoning any structure, material, or other matter on the seabed of the Sanctuary.

Habitat means those areas that provide space for individual and population growth and normal behavior of humpback whales, and include sites used for reproductive activities, including breeding, calving and nursing.

Military activities means those military activities conducted by or under the auspices of the Department of Defense and any combined military activities carried out by the Department of Defense and the military forces of a foreign nation.

Sanctuary means the Hawaiian Islands Humpback Whale National Marine Sanctuary.

Sanctuary resource means any humpback whale, or the humpback whale's habitat within the Sanctuary.

Shoreline means the upper reaches of the wash of the waves, other than storm or seismic waves, at high tide during the season of the year in which the highest wash of the waves occurs, usually evidenced by the edge of vegetation growth, or the upper limit of debris left by the wash of the waves.

Take or taking a humpback whale means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure a humpback whale, or to attempt to engage in any such conduct. The term includes, but is not limited